

STATE OF ALASKA

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DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT/PERMITTING
ALASKA COASTAL MANAGEMENT PROGRAM

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December 10, 2003

Mr. John Thiede
Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region Land Office
550 W. 7th Ave., Suite 900C
Anchorage, AK 99501-3577

Dear Mr. Thiede:

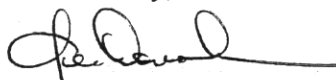
Subject: Ernest Sound/Deer Island Aquatic Farmsite Disposal
Aquatic Farm Disposal Program
State I.D. No. AK 0307-31J
Final Consistency Determination - Concurrence

The Office of Project Management and Permitting (OPMP) has completed coordinating the State's review of your proposed aquatic farmsite project for consistency with the Alaska Coastal Management Program (ACMP).

OPMP has developed the enclosed final consistency determination, in which the State concurs with the Department of Natural Resources' certification that the project is consistent with the ACMP. This is the final decision for your project.

By copy of this letter, I am informing the U.S. Army Corps of Engineers and State review participants of OPMP's finding. If you have any questions, please contact me at 907-465-4664 or email joe_donohue@dnr.state.ak.us. The State appreciates your cooperation with the ACMP.

Sincerely,



Joe Donohue
ACMP Project Specialist

Enclosure

Distribution List:

Mike Ostasz – ADEC, Anchorage *
Jackie Timothy – ADFG/Mariculture, Juneau *
Wayne Dolezal – ADFG, Anchorage *
Jim Anderson – ADNR/DMLW, Juneau *
Doug Sanvik – ADNR/DMLW, Juneau *
Guyla McGrady – ADNR/DMLW, Anchorage *
Christina Nahorney – ADNR/DMLW, Anchorage *
Jim Cariello – ADNR/OHMP, Petersburg *
Kim Kruse – ADNR/OPMP, Anchorage *
Julie Raymond-Yakoubian – ADNR/SHPO, Anchorage *
Leo Luczak – City of Petersburg *
Carol Rushmore – City of Wrangell
John Leeds – USACE, Juneau * **
Scott Snelson – USFS, Sitka *
Steve Brockmann – USFWS, Juneau *
Linda Shaw – NMFS, Juneau *

= Emailed, ** = Faxed

**ALASKA COASTAL MANAGEMENT PROGRAM
FINAL CONSISTENCY DETERMINATION
CONCURRENCE**

DATE ISSUED: DECEMBER 10, 2003

PROJECT TITLE: Ernest Sound/Deer Island AREA AQUATIC FARMSITE DISPOSAL

STATE ID. NO.: AK 0307-31J

AFFECTED COASTAL RESOURCE DISTRICT: NONE

DESCRIPTION OF PROJECT SUBJECT TO ACMP REVIEW:

Summary: The project subject to this consistency review is the use of tideland and submerged land for aquatic farming utilizing suspended culture. The nomination area is divided into 13 sites and consists of the following uses of tide and submerged land, as further described in the DNR Preliminary Finding and Decision for Proposed Aquatic Farmsite Leases Located Off Ernest Sound/Deer Island:

General Locational Reference: Ernest Sound and Deer Island, 22-37 miles south-southeast of Wrangell.

For the land disposal program sites being proposed by DNR, the scope of this review covers the typical operations and state authorizations for the sites discussed below.

WRA-N014 and N015, Zimovia Islets:

Activity: Suspended culture..

Locational Reference: Zimovia Strait, between Etolin Island and Wrangell, approximately 22 miles southeast of Wrangell.

MTRS: T. 65 S., R. 85 E., Sec. 35 and 36, CRM

Number of Sites: Not to exceed two farms or sites.

Size: 10 acres per farm, not to exceed 20 acre total from 40-acre area.

USGS Map: Petersburg A-1

Nautical Chart: 17285

WRA-N012 and N013, Lower Zimovia Strait:

Activity: Suspended culture.

Locational Reference: East coast of Etolin Island, lower Zimovia Strait, west of Thoms Point, 27 miles SE of Wrangell. 30 miles southwest of Wrangell, 13 miles northeast of Coffman Cove.

MTRS: T. 66 S., R. 86 E., Sec. 28, CRM

Number of Sites: Not to exceed two farms or sites.

Size: Not to exceed 20 total acres from 55-acre area

USGS Map: Petersburg A-1
Nautical Chart: 17385

WRA-N021, Niblack Islands:
Activity: Suspended culture.

Locational Reference: Lower Ernest Sound, 32 miles south-southeast of Wrangell.
MTRS: T. 67 S., R. 86 E., Sec. 27, CRM
Number of Sites: 1
Size: 1-10 acres from a 15-acre designated area
USGS Map: Petersburg A-1
Nautical Chart: 17385

WRA-NO09, N010, N011, Menefee Inlet :
Activity: Suspended culture.

Locational Reference: In Menefee Inlet on the west side of Ernest Sound, west of Deer Island, 28 miles south-southeast of Wrangell.
MTRS: T. 67 S., R. 85 E., Sec. 1 and 12, CRM
Number of Sites: 3 maximum
Size: 30 acres combined from 250-acre area
USGS Map: Petersburg A-1
Nautical Chart: 17385

WRA-N016, N017, Deer Island Sites #1 and #2:
Activity: Suspended culture.

Locational Reference: West side of Deer Island on east side of Ernest Sound, 37 miles south-southwest of Wrangell.
MTRS: T. 68 S., R. 86 E., Sec. 1 and 12, CRM
Number of Sites: 2
Size: 1-10 acres with maximum combined of 30 acres from 50-acre area
USGS Map: Petersburg A-1
Nautical Chart: 17385

WRA-N018, N019, N020, Deer Island Sites #3, #4 and #5:
Activity: Suspended culture.

Locational Reference: West side of Deer Island on east side of Ernest Sound, 37 miles south-southwest of Wrangell.
MTRS: T. 68 S., R. 86 E., Sec.23, 24, 25, 26, and 36, CRM
Number of Sites: 3
Size: 1-10 acres each site, not to exceed 30 acres combined total from designated areas (N018: 30 acres; N019: 130 acres; N020: 85 acres)
USGS Map: Petersburg A-1
Nautical Chart: 17385

All Sites -

Potential farm sites covered by this review are defined by, and must meet, operational standards considered by the agencies to be "typical." The scope of the activities covered by this ACMP review includes the sites themselves and the "typical" standards for suspended culture and inter-tidal clam operations as identified in the DNR Preliminary Finding and Decision. In summary, those typical standards include:

- Generally start utilizing up to one acre of tide and submerged land.
- Suspended culture generally uses lantern nets, bags, trays or cages suspended from surface longlines or log rafts that are anchored at each end; contain all gear within the acreage requested; farm area delineated with clearly marked buoys.
- Typically, aquatic farm sites in Alaska utilizing suspended gear are on the average three acres in size with a 50' X 50' hardening area on the beach. Additionally, aquatic farmers typically build a work raft, which is anchored within the growing area.
- Alaska farmers generally use suspended culture techniques where single oysters are grown in nets or trays hung from floating loglines in waters 30-120 feet deep. This does not preclude the lessee to use a new or innovative culture technique as long as it is a suspended culture technique for the purpose of farming oysters, clams or scallops. In addition to the farm site area aquatic farmers generally utilize an area of approximately 50' x 50' in the inter-tidal area to hold animals out of the water where they are exposed to air for at least part of the day, a few weeks to a few months. This process will remove most of the fouling and harden the shell to extend the shelf life of the oyster. It can be expected that at a minimum shellfish will require a period of holding out of the water while awaiting results of PSP tests. Any holding area in the inter-tidal zone outside of the farm site boundary will be allowed only upon approval by the Department's of Natural Resources, Fish and Game and Environmental Conservation.

For the land disposal program sites being proposed by DNR, the scope of this review covers the state authorizations for the sites identified below and the typical operations discussed above.

ACTIVITIES NOT IN THE SCOPE OF REVIEW:

The activities also require authorization by the U.S. Corps of Engineers (COE). However, because individual applicants do not exist for the actual projects within the sites proposed by the state, and applicants will subsequently propose development plans for the sites after this review is completed, this review information does not include applications for a COE permit. Individual applicants may be able to fulfill COE requirements by obtaining a general permit (GP) #91-7N (Aquatic Farm Structures) and a Nationwide Permit #4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities)] from the COE. These permits were previously found consistent with the ACMP and would not require subsequent ACMP review. If an individual permit is required by the COE, and more than minor changes are made to the activities addressed by this determination, additional review for consistency with the ACMP may be required.

Activities may also require authorization from the U.S. Forest Service (USFS) for any associated upland use within national forests. However, because individual applicants do not exist for the

actual projects within the sites proposed by the state, and applicants will subsequently propose development plans for the sites after this review is completed, USFS permit applications are not included at this time. Individual applicants will be required to apply for all necessary authorizations. If an individual permit is required by the USFS, and more than minor changes are made as a result of that review, additional review for consistency with the ACMP may be required.

The activity of acquiring or transferring shellfish or aquatic plants is not subject to this ACMP review. The activity requires authorization from the Department of Fish and game (Shellfish and Aquatic Plant Transport and/or an Aquatic Stock Acquisition permit).

AUTHORIZATIONS:

The project must be found consistent with the ACMP before the following State authorizations may be issued:

Alaska Department of Fish and Game (ADFG)
Aquatic Farm and Hatchery Operation Permit
Special Area Permit

Alaska Department of Natural Resources (DNR)
Aquatic Farmsite Lease

The activity of acquiring or transferring shellfish or aquatic plants is not subject to this ACMP review. The activity requires authorization from the ADFG (Shellfish and Aquatic Plant Transport and/or an Aquatic Stock Acquisition permit).

Department of Environmental Conservation authorizations will be necessary at later stages of the authorized activities. These permits are not subject to ACMP review.

The activities also require authorization by the COE and possibly the USFS. See “**ACTIVITIES NOT IN THE SCOPE OF REVIEW**”, above for more information. The DNR Aquatic Farmsite Leases will be issued with an effective date of January 2, 2004. State agencies shall issue other permits within five days after ACMP/OPMP issues the final consistency determination that concurs with the proposed project, unless the resource agencies consider additional time necessary to fulfill their statutory or regulatory authority.

CONSISTENCY STATEMENT:

Based on an evaluation of the project by the Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources, the State of Alaska concurs with the consistency certification submitted by the Alaska Department of Natural Resources, and signed by Ms. Christina Nahorney.

Please note that, in addition to their consistency review, State agencies with permitting responsibilities will evaluate this proposed project according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their statutes and regulations in addition to being consistent with the coastal

program. An agency permit or authorization may be denied even though the State concurs with the ACMP certification. Authorities outside the ACMP may result in additional permit/lease conditions. If a requirement set out in the project description (per 6AAC 50.265) is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement. Applicants may not use any State land or water without DNR authorization.

This final consistency determination represents a consensus reached between you as the project applicant and the reviewing agencies listed above; regarding the conditions necessary to ensure the proposed project is consistent with the ACMP. We are informing the federal agency responsible for approving a federal authorization for your project that your original proposal has been modified subject to the conditions in this consistency determination.

This final consistency determination is a final administrative decision for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the superior court must be made within 30 days of the date of this determination.

ADVISORIES:

Department of Fish and Game -

ADF&G has advised OPMP that the following stipulation will be incorporated into the Operating Permit for the site subject to this particular ACMP consistency review. This stipulation is being carried solely under ADFG authority and is not needed for consistency.

- The applicant shall discuss predator exclusion plans with the Mariculture coordinator before the Operation Permit will be issued. The farmer shall monitor any exclusion devices for entanglement of fish and wildlife and shall report all incidences to the Mariculture Coordinator. If, upon inspection, ADF&G finds the exclusion devices have been unattended and are in disrepair, the farmer will be issued a warning and the Mariculture Coordinator will discuss with the farmer a strategy for successful maintenance of the exclusion devices. If, upon a second inspection, ADF&G finds the exclusion devices unattended or in disrepair, the farmer will be cited and fined (AS 16.40.170 class B misdemeanor) and will no longer be allowed the use of exclusion devices at the farmsite.

Department of Natural Resources:

Division of Mining, Land and Water (DMLW) -

Archaeological Sites: The ACMP Historic, Prehistoric, and Archaeological Resources Standard (6AAC 80.150) requires state agencies and coastal districts to identify areas of the coast which are important to the study, understanding, or illustration of national, state or local history or prehistory. However, the ACMP relies on other governmental programs to protect the identified resources. Comments and recommendations on these sites were received from the State Historic Preservation Officer as follows:

WRA-N009, N010, N011: High potential. The area should be surveyed.

WRA-N014 and N015: Do not lease. There is an abandoned village within the lease area. Though there is no Alaska Historic Records number, the site is indicated on the USGS topo map.

The DMLW has advised OPMP the Aquatic Farm Leases will carry a stipulation stating "if cultural or paleontological resources are discovered as a result of this activity, work that would disturb such resources must be stopped and the Alaska Office of History and Archaeology (907) 269-8721) shall be contacted immediately. The OPMP recommends that the above DNR/DMLW Aquatic Farm Lease stipulation require that the U.S. Army Corps of Engineers (907-753-2712) also be contacted so that consultation per Section 106 of the National Historic Preservation Act may proceed. By copy of this letter, the OPMP is advising the U.S. Army Corp of Engineers of DNR/SHPO's recommendation.

Please note that, in addition to their consistency review, agencies with permitting responsibilities will evaluate this proposed project according to their specific permitting authorities. Agencies will issue permits and authorizations only if they find the proposed project complies with their statutes and regulations in addition to being consistent with the coastal program. An agency permit or authorization may be denied even though the State concurs with the ACMP.

As a result, authorities outside the ACMP may result in additional permit/lease conditions. Participating agencies have advised OPMP conditions may be included in their authorizations solely under their own authority that are not needed for consistency with the ACMP.


If a requirement set out in the project description (per 6AAC 50.265) is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement. Applicants may not use any State land or water without DNR authorization.

This consistency determination is only for the project as described. If, after issuance of a final consistency determination or response, the applicant proposes any changes to the approved project, including its intended use, prior to or during its siting, construction, or operation, the applicant must contact this office immediately to determine if further review and approval of the modifications to the project is necessary. Changes may require amendments to the State authorizations listed in this determination or response, or may require additional authorizations.

As detailed above, if the proposed activities reveal cultural or paleontological resources, the applicant is to stop any work that would disturb such resources and immediately contact the State Historic Preservation Office (907-269-8721) and the U.S. Army Corps of Engineers (907-753-2712) so that consultation per section 106 of the National Historic Preservation Act may proceed.

FINAL CONSISTENCY DETERMINATION PREPARED BY:

Joe Donohue – ACMP Project Specialist
302 Gold Street, Ste. 202
Juneau, Alaska 99811-0030
(907) 465-4664


Joe Donohue

ACMP CONSISTENCY EVALUATION

“ERNEST SOUND/DEER ISLAND AREA AQUATIC FARMSITE DISPOSAL” – AK 0307-31J

Pursuant to the following evaluation, the project as proposed is consistent with applicable ACMP statewide and affected coastal resource district enforceable policies.

STATEWIDE ENFORCEABLE POLICIES
6 AAC 80.040. Coastal Development
<i>Evaluation: a) Based on responses from review participants this project, as proposed and described, meets the criteria and intent of this standard. The project is water dependent and does not preclude a higher priority water dependent or water related use. b) OPMP defers to the United States COE to interpret compliance with the standards referenced.</i>
6 AAC 80.050. Geophysical Hazard Areas
<i>Evaluation: Not Applicable. The area has not been identified as a known geophysical hazard area and the proposed project does not involve construction of structures that may be impacted by geophysical hazards. The project is not expected to cause any hazardous activities.</i>
6 AAC 80.060. Recreation
<i>Evaluation: a) The area has not been designated as a recreational use area by an affected coastal district. b) A public access easement will be reserved to protect public access in accordance with 11 AAC63.050(b)(6) and 11 AAC 51.</i>
6 AAC 80.070. Energy Facilities
<i>Evaluation: This standard does not apply to this proposed project.</i>
6 AAC 80.080. Transportation & Utilities
<i>Evaluation: This standard does not apply to this proposed project.</i>
6 AAC 80.090. Fish & Seafood Processing
<i>Evaluation: Based on responses from review participants this project, as proposed and described, meets the criteria and intent of this standard. This project is located outside any coastal district.</i>
6 AAC 80.100. Timber Harvest & Processing
<i>Evaluation: This standard does not apply to this proposed project.</i>
6 AAC 80.110. Mining & Mineral Processing
<i>Evaluation: This standard does not apply to this proposed project.</i>
6 AAC 80.120. Subsistence
<i>Evaluation. No public comments were received that identified conflicts with subsistence activities. No significant effects to subsistence are expected.</i>
6 AAC 80.130. Habitats
<i>Evaluation: The proposed draft ADF&G Aquatic Farm Operation Permit and DNR Preliminary Finding include conditions intended to maintain or enhance the biological, physical, and chemical characteristics of the offshore habitat which contribute to its capacity to support living resources.</i>
6 AAC 80.140. Air, Land & Water Quality
<i>Evaluation: DEC statutes and regulations with respect to air, land and water quality are incorporated into the ACMP. HB 191, effective 5/20/03, further indicates that the issuance of a DEC authorization constitutes consistency with the ACMP for the authorized activity and this standard.</i>
6 AAC 80.150. Historic, Prehistoric, and Archaeological Resources
<i>Evaluation: The ACMP Historic, Prehistoric, and Archaeological Resources Standard (6AAC 80.150) requires state agencies and districts to identify areas of the coast which are important to the study, understanding, or illustration of national, state or local history or prehistory, however relies on other governmental programs to protect the identified resources. The Alaska Office of History and Archaeology comments identified known cultural sites near several areas and made recommendations as identified in the Advisories.</i>

The aquatic farm lease will carry a stipulation stating "if cultural or paleontological resources are discovered as a result of this activity, work that would disturb such resources must be stopped and the Alaska Office of History and Archaeology shall be contacted immediately at (907) 269-8721 ". The OPMP has recommended to DNR/MLW that the above DNR/MLW Aquatic Farm Lease stipulation require that the U.S. Army Corps of Engineers (907-753-2712) also be contacted so that consultation per Section 106 of the National Historic Preservation Act may proceed. The requirements of this standard are met.

AFFECTED COASTAL RESOURCE DISTRICT ENFORCEABLE POLICIES

No affected Coastal District: *This project is outside the boundaries of any coastal district.*